IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8302 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIMLABEN,WD/O. RASIKLAL K. JOSHI

Versus

DANABHAI KALYANBHAI ROHIT

Appearance:

MR AJ PATEL for Petitioners

MR GR SHAIKH for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/10/2000

CAV JUDGEMENT

"SOCIAL JUSTICE IS A DYNAMIC DEVICE TO MITIGATE THE SUFFERINGS OF THE POOR, WEAK DALITS, TRIBALS AND DEPRIVE SECTIONS OF THE SOCIETY AND TO

ELEVATE THEM TO THE LEVEL OF EQUALITY TO LIVE LIFE WITH DIGNITY OF PERSON. SOCIAL JUSTICE IS NOT A SIMPLE OR SINGLE IDEA OF A SOCIETY BUT IS AN ESSENTIAL PART OF COMPLEX SOCIAL CHANGE TO RELIEVE THE POOR ETC. FROM HANDICAPS, PENURY TO WARD OF DISTRESS AND TO MAKE THEIR LIFE LIVABLE FOR GREATER GOOD OF SOCIETY AT LARGE. IN OTHER WORDS THE AIM OF SOCIAL JUSTICE IS TO ATTAIN SUBSTANTIAL DEGREE OF SOCIAL, ECONOMIC AND POLITICAL EQUALITY WHICH IS LEGITIMATE EXPECTATION AND CONSTITUTIONAL GOAL. SOCIAL SECURITY JUST AND HUMANE CONDITIONS OF WORK AND LEISURE TO POORER WEAK ARE PART OF HIS MEANINGFUL RIGHT TO LIFE AND TO WHERE SELF EXPRESSION OF HIS PERSONALITY AND TO ENJOY THE LIFE WITH DIGNITY."

#. Heard Mr.A.J.Patel, learned advocate appearing on behalf of the petitioners and Mr.G.R.Shaikh, learned advocate appearing on behalf of the respondents.

#. The present petition, wherein RULE has been issued and status quo has been granted by this Court on 12th December, 1990.

#. The brief facts giving rise to this petition are as under.

The applicant before the tribunal Danabhai Kalyanbhai Rohit had submitted an application dated 24th August, 1981 to the Mamlatdar and A.L.T., Nadiad under Section 32-FF read with Section 2(18)(d) of the Bombay Tenancy and Agricultural Lands Acts, 1948 [hereinafter referred to as `the Act' for short] in respect of the agricultural lands bearing Survey No. 1190 admeasuring 1 acre 8 gunthas, Survey No. 1191/1 admeasuring 0 acre 28 gunthas, S.No. 1191/2 admeasuring 0 acre 27 gunthas and Survey No. 1180/1/1 admeasuring 1 acre 11 gunthas of village Chaklashi claiming tenancy rights against the present petitioner. The Mamlatdar and A.L.T. conducted the matter as Tenancy Case No. Chaklashi / 32FF/ 5082 and passed the order on 23rd December, 1982 holding that the applicant before tribunal was entitled to the relief viz. fixation of purchase price. The appeal was preferred by the present petitioners before the Deputy Collector, Kheda being Tenancy Appeal No. 6060 / 83 and the Deputy Collector by his order dated 19th December, 1983 remanded the matter to the Mamlatdar with specific direction. The Mamlatdar and A.L.T. then conducted the Tenancy Case No. Chklashi / 32/ FF/ 1131/ 85 and passed order on 6th August, 1985 to the effect that the applicant was the tenant in respect of the lands and

fixing the purchase price but the present petitioner preferred tenancy appeal, Kheda who by his order dated 15th April, 1986 set aside the order of the Mamlatdar and ALT. Aggrieved thereby, a revision application was filed against the order of Deputy Collector before the Gujarat Revenue Tribunal being Revision Application No. Tenancy / DA / 893 of 1986. The said revision application has been decided by the Gujarat Revenue Tribunal by order dated 31st August, 1990 wherein, the tribunal has allowed the revision application filed by the respondent and the impugned order of the Deputy Collector is set aside and order of Mamlatdar and ALT dated 6th August, 1985 has been restored by the Tribunal against that the present petition has been filed by the present petitioner.

#. Mr.A.J.Patel, learned advocate for the petitioner has submitted that initially the respondent tenant has filed application under Section 70-(b) of the Tenancy Act which is at Annexure-A on page 13 for the prayer to declare that the respondent is a tenancy in land in question and possession of the said land are with the respondents and also prayed to determine the purchase price of the land in question.

#. Mr. Patel has also submitted that the said application under Section 70-(b) has been filed by the respondents on 1st July, 1980 which was subsequently withdrawn by the respondents and thereafter the tenancy case No. 2/ 81 has been filed by the respondents under Section 32 FF to 2(18)(d) of the Tenancy Act on 24th August, 1981. Mr.Patel, learned advocate has also submitted that the application which has been filed by the responders under Section 32 FF read with 2(18)(d) of the Tenancy Act is not maintainable. Mr. A.J. Patel has referred to relevant provisions of Section 2(18)(d) which provides that tenant means a person who hold the land on lease and includes (a) a person who is deemed to be tenant under Section 4 (b) a person who is a protected tenanant and (c) a person who is a permanent tenant (d)) a person who is after surrender of his tenancy in respect of any land at any time after the appointed day but before the specified date has continued or his deemed to have continued to remain in actual possession with or without the consent of the landlord of such land till specified date and the word landlords shall be construed accordingly. Mr.Patel has also referred the relevant provisions of Section 32 FF which provides that notwithstanding anything contained in proceeding section, a person who is a tenant within a meaning of sub clause (d) of Clause (18) of Section 2, shall be deemed to have purchased the land in his possession of which he is

tenant free from all encumbrance subsisting thereon on the specified date. Sub clause 2 proviso of Section 32 to 32 E (both inclusive) and Section 32(G) to 32(R) (both inclusive) shall so far as may be applicable apply to such purchase). Relying upon the said provisions as well as Section 15 of the Tenancy Act also referred to by the learned Advocate Mr.Patel on behalf of the petitioner. Section 15 provides that notwithstanding anything contained in this Act or any other law for the time being in force, no tenant shall at any time terminate the tenancy in respect of any land by surrendering his interest therein in favour of the landlord. If the tenant intends to terminate tenancy in respect of any land by surrendering his interest therein, he shall intimate in writing to the landlord and to the Collector to the effect that. On receipt of such intimation, the Collector shall after giving an opportunity to the landlord, the tenant and any other person interested in the land to be heard and after holding such inquiry as he deems fit call upon the tenant to tender to the landlord the rent in arrears within period of specified in the order and pass an order directing that the tenancy shall be terminated and that the land shall vest in the State Government free from all encumbrance as if on termination of such tenancy, the State Government had acquired the land from the landlord and such lands shall be liable to be disposed of in the manner provided under Clause (c) of sub Section 2 of Section 32-P. Mr.Patel relying upon the aforesaid provision of Tenancy Act has submitted that the tribunal has committed an error in invoking the jurisdiction under Section 78 of the Tenancy Act and ignoring the pleadings of the parties and the averments in original application made by the respondents under Section 32 FF of the Tenancy Act. He also submitted that the lower authority has to examine whether the ingredients of Section 32 FF were satisfied or not and if the tribunal has examined the question on that basis without being influenced on any consideration, it would have come to a definite conclusion that ingredients of Section 32 FF were not satisfied. In fact according to Mr.Patel that the tribunal has referred to a specific finding that the ingredients of Section 32 FF are not specified and one such finding is recorded, there was no alternative with the tribunal except to dismiss the revision application. Mr.Patel has also submitted that if the ingredients of Section 32 FF has not been satisfied then the Tribunal is not entitled in the law to resort to any other provisions of the Tenancy Act and plead that there is sufficient material on record to invoke any other section. In that event, it is the duty of the Tribunal to give reasonable opportunity of being

heard in respect of resorting to any other provisions of the Tenancy Act to the petitioner but that opportunity of hearing was not given by the tribunal and therefore, the order is bad. He also submitted that the tribunal has altogether made out a new case in favour of the respondents which was initially not pleaded by respondents at all and that too without affording an opportunity to the petitioners to meet with such case. He also submitted that under Section 78 of the Act, the Tribunal has no such powers to make out altogether a new case in favour of the respondent which was not pleaded by the respondents at all in earlier proceedings. He also submitted that the tribunal has committed error in coming to the conclusion that Section 32 G would be applicable to the facts of the present case. According to Mr.Patel, this is nothing but gross violation of principles of natural justice which would nullify the order passed by the Tribunal. In short, the submission of Mr.Patel is that the tribunal has travelled beyond the scope of original proceedings and pleadings of respondents. Mr. Patel has also relied upon the decision of the Apex Court reported in AIR 1984 Supreme Court page 38 in case of MOHAMAD YUNUS VS. MOHD. MOSTAQUIM. Relying on the said authority Mr.Patel has submitted that if the lower authority remains within his jurisdictional limits and within statutory provisions then, no error would be committed by the lower authority but if the lower authority travel beyond the jurisdictional limits and statutory limits which has been prescribed under the statutory provisions,then it is basic error and error of jurisdiction would be committed by the lower authority and therefore, this Court while exercising the powers under Article 227 of the Constitution have powers to set aside the said orders which is beyond the jurisdiction and beyond the statutory limitation prescribed under the tenancy act.

#. Mr.Patel has also pointed out that factual aspect of the matter that proceedings before the Mamlatdar and ALT, Nadiad case No.. 1131 / 85 under Section 32 FF which were filed by the respondent wherein, two questions have been required to be examined on the basis of the earlier order passed in Appeal No.6060 of 1983 on 19th November, 1983. Two questions are that in land in question out of four survey numbers, in two survey numbers the name of Dudha Kalyan was earlier mentioned as the tenant and therefore it is necessary to examine the heirs of Dudha Kalyan or not and the second question which required to be examined is that in respect of the land in question, on account of surrendering the tenancy right in favour of the landlord, whether the decision has been arrived at in

the proceedings conducted under the law in respect of actual handing over the possession to the landlord or not ? He also submitted that the legal heirs of the Dudha Kalyan his son Khanabhai though served with the notice but he did not remain present in the further proceedings before the authority and therefore presumption was that he was not interested in the said land in question. Mr. Patel has also submitted that out of four survey numbers, in two survey numbers, the name of Dudha Kalayan as tenant was recorded and in respect of the last survey number, name of Motibhai Bhava has been recorded as tenant. Considering this aspect, Mr.Patel has relied upon Section 40 of the Tenancy Act and pointed out that Dudha Kalyan is brother of Dana Kalyan and as there is no heir of Dudha Kalyan and the son of Dudha Kalyan was not interested and therefore, even in such circumstances, Dana Kalyan is not entitled to two survey numbers which belongs to Dudha Kalyan as tenant. Therefore, relying on Section 40 of the Tenancy Act, according to Mr.Patel, Dana Kalyan is not entitled to the land in question as tenant being the legal heirs of Dudha Kalyan. He also referred to relevant Section 40 of the Tenancy Act which provides that where tenant other than a permanent tenant dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death to such heir or heirs of the deceased tenant as may be willing to continue the tenancy. Where the tenancy is inherited by the heirs, other than the widow of such deceased tenant such widow shall have such charge for maintenance on the profits of such land. Therefore, Mr. Patel submitted that Dana Kalyan is not a legal heir under the provisions of Hindu Law or Succession Act and therefore, considering the relevant provisions of Section 40 of the Act, Dana Kalyan is not entitled to have tenancy right of his brother Dudha Kalyan. Therefore, according to Mr.Patel that lower authorities have committed error especially the Tribunal has committed error in passing the order beyond its jurisdiction and therefore the orders are in question require to be quashed and set aside.

#. Mr.G.R.Shaikh, learned advocate appearing on behalf of the respondent has submitted that the tribunal has rightly considered the merits of the matter. The tribunal has jurisdiction under Section 78 of the Tenancy Act and passed just, proper and reasonable and valid order and done substantial justice to the parties. Mr.Shaikh submitted that in such matter technical approach cannot be encouraged and rightly not encouraged by the revisional authority and therefore no interference is required while exercising the powers under Article 227

of the Constitution. Mr.Shaikh has produced on record the copy of the order passed by the Mamlatdar dated 23rd December, 1982 wherein, it has been declared that Dana Kalyan as tenant of the land in question and he is cultivating the land in question, therefore, purchase price has been fixed by the Mamlatdar at Rs.5521/-. Mr. Shaikh relying upon the said order has submitted that the Mamlatdar in the said order has considered all the evidence on record and specifically land in question has been given by the landlord to Dana Kalyan as Dudha Kalyan jointly and both were jointly cultivating the land in question. So according to Mr.Shaikh, there was no separate survey number which was given either to the Dana Kalyan or Dudha Kalyan. The landlord has given lands in question to both the brothers jointly and there was no separate transaction in respect of each brother and therefore, in case of Dudha Kalyan who died ultimately, the land in question Dana Kalyan become tenant of the land in question and if the son of Dudha Kalyan is not interest that aspect will not come in the way against the Dana Kalyan of having tenancy right in respect of all the land in question. The name of both the brothers respondents were entered as tenancy in entry No. 11435 dated 4th December, 1954. The land in question was cultivated by both the brothers - respondents with consent of landlord Keshavlal. The respondents was not aware of the cancellation of his name from the revenue record as tenant. Before the Mamlatdar one JAMA NATHA and another RAMA MANGAL VAGHELA were examined and both witnesses had stated before the Mamlatdar that the lands in question were cultivated by on the relevant time by Dana Kalyan. The third witness Ranchhod Rumal has stated samething and further deposed that water charges has been received by Ranchhod Rumal from Dana Kalyan and thereafter some other witnesses were also examined in favour of the Dana Kalyan and after considering the entire evidence and receipt of water charges and other evidence which proved the facts that possession of land in questions with Dana Kalyan who is cultivating the land in question from 1954 to 1980. The relevant receipts were proved on the basis of the evidence of Ranchhod Rumal and Libaben. The Mamlatdar has also examined the relevant provisions of Section 32 FF as well as Section 2(18)(d)) and thereafter ultimately come to the conclusion that the land in questions were in possession of the both the brothers Dana Kalyan and Dudha Kalyan and without following legal procedure, the Talati has removed the name of Dana Kalyan as tenant in revenue record. Inspite of the fact that the name of Dana Kalyan was cancelled from the revenue record as tenant but the possession remained with the Dana Kalyan and he was

cultivating the land in question and the said fact has been believed by the Mamlatdar on the basis of the oral and documentary evidences which were led before the authority and ultimately the Mamlatdar has held that after appreciating all the evidence on record and also considering the documentary evidence of various receipts, the Mamlatdar has come to the conclusion that Dana Kalayan is a tenant under the provisions of Tenancy Act of the land in question and considering the other facts, purchase price has been fixed by the Mamlatdar. This order dated 23rd November, 1982 was challenged by the petitioners in Appeal before the Deputy Collector, Kheda being tenancy Appeal No. 6060/83 wherein by order dated 19th December, 1983, the Deputy Collector remanded the matter to the Mamlatdar with specific direction then further proceedings have been narrated as above has been carried out between the parties. Therefore, Mr.Shaikh has relied upon the first order dated 23rd December, 1982 though according to him, the facts of first order has been suppressed by the petitioner and not annexed with the petition and therefore, it amounts to suppression of fact.

#. I have perused the order passed by the Mamlatdar dated 23rd December, 1982. Mr.Shaikh has submitted that tenancy has not been surrendered by the petitioner under the provisions of Tenancy Act but necessary entry was made in the revenue record which does not amount to surrender of tenancy under the provisions of Tenancy Act. Mr.Shaikh has also submitted that even at present the possession with the respondent and they are cultivating the land in question. Mr.Shaikh has also submitted' that Section 40 of the Tenancy Act cannot be interpreted considering the personal law of the respective parties. According to his submission, Dana Kalyan means the respondent is entitled as legal heirs of Dugha Kalyan to become tenant of the entire land in question. Mr.Shaikh has also relied upon some of the decisions of Apex Court as well as this Court. In case of AMRIT BHIKAHJI KALE VS. KASHINATH JANARDAN AND OTHERS reported in 1983 GLH 900, relying on this decision Mr.Shaikh submitted that the Apex Court has observed that on the tillers day the landlords' interests in land got extinguished and simultaneously by statutory sale without anything more by the parties, the extinguished title of the landlord was kindled or created in the tenant. The very moment landlord - tenant relationship as understood in common law of Transfer of Property Act came to an end. The landlord from the date of statutory sale was only entitled to receive the purchase price. Without any act of transfer inter vivos,the title of the landlord was

extinguished and created simultaneously in the tenant making the tenant, the deemed purchaser. Therefore, the tenant became the deemed purchaser on 1-4-1957. The Lands Tribunal had absolutely no jurisdiction to proceed on the footing that the date of sale was postponed. it was neither an incorrect order nor an erroneous order but the Lands Tribunal lacked the jurisdictione to proceed under Section 32F. All subsequent proceedings therefore, were ab initio void and without jurisdiction and the High Court was right in holding that the orders passed therein were nullity. The Tribunal clutched at a jurisdiction not vested in it and in such a situation the Tribunal lacked the jurisdiction to entertain any proceeding purporting to be between landlord and tenant on the erroneous assumption that tenant was still a tenant though he had long since become the deemed purchaser. The compulsory purchase by operation of the law had taken place as early as on 1-4-1957 and that legal position could not washed away. Relying upon said decision, Mr.Shaikh submitted that in the present case tillers day on 1st April, 1957, the respondents were cultivating the land in question and they were declared as tenant and the Mamlatdar has rightly decided in favour of the respondents by order dated 23rd December, 1982 to the effect that it amounts to statutory sales and the respondent become the owner of the land by way of deemed purchase on 1st April, 1957. Mr.Shaikh has also relied upon another decision of this Court in case of HEIRS OF DECEASED KALABHAI P. 1/1 SHANTABEN KALABHAI AND OTHERS VS. TARABEN, WIDOW OF GORDHANBHAI AND OTHERS reported in 1991(1) G.L.H. 149. The attention of this Court is drawn to the relevant observations made by this Court that by virtue of the notification dated 7-1-60, the State of Gujarat invested the Agricultural Lands Tribunal with the jurisdiction of Mamlatdar. It is thus clear that the ALT - Mamlatdar in an enquiry under S.32 G will also have jurisdiction to decide the question as to whether the person is or was a tenant or a protected tenant or a permanent tenant under Section 70(b) of the Act and such an order of the ALT Mamlatdar would not be open to attack on the ground of lack of jurisdiction. When such questions arise under Section 32-G and when the Agricultural Lands Tribunal is invested with the jurisdiction of the Mamlatdar, there can arise no situation where the question should be referred to some other authority or a separate enquiry under Section 70(b) should be held as observed by the Tribunal. In such cases, no separate application as envisaged under Section 70(b) of the Act would be necessary. It is also observed by this Court that in order to commence proceeding under Section 32G it is not necessary that notices to tenants

ought to have been issued immediately after the tiller's day (i.e. 1-4-1957). He also relied upon the decision of this Court in case of FATEHMOHMED FAKIRMOHMED V. JAMALBHAI CHANDBHAI POPATWALA, 1983 reported in GLT Pg. 167 wherein has been observed by this Court [coram : V.V. Bedarkar, J.] that merely because a litigant has mentioned a wrong section as Section 151 of the Code of Civil Procedure,that would not take out the jurisdictione of the Court. Similarly he also relied upon the decision of the Apex Court in case of M/S FRICK INDIA LTD V. UNION OF INDIA reported in AIR 1990 Supreme Court 689, wherein it has been observed by the Apex Court that it is well settled that the heading prefixed to sections or entries cannot control the plain words of the provision, they cannot also be referred to for the purpose of construing the provision when the words used in provision when the words used in the provision are clear and unambiguous, nor can they be used for cutting down the plain meaning of the words in the provision.

#. I have heard the learned advocates appearing for the parties at length and in detail. The tribunal has considered all the contentions which have been raised by the petitioner before the tribunal and after considering the judgments of lower authorities as well as voluminous evidence on the record before the Mamlatdar, the main question which was agitated before the tribunal in regard to surrender of tenancy. The said tenancy has been surrendered by the mutation entry No. 11435 of 4th December, 1954 in the case though it shows a wrong surrender and yet the possession continued all through out with the respondents with the consent or otherwise of the landlord and, therefore, the application under Section 32FF read with Section 2(18)(d)) was made. This aspect has been considered by the tribunal and the tribunal has come to the conclusion that the very point has been examined by the lower authorities - Mamlatdar and the Deputy Collector whose respective judgments are before the tribunal. The tribunal has not agreed with the submission made by learned advocate Mr.Patel that application under Section 32FF read with Section 2(18)(b) is not maintainable. The tribunal has examined the provisions of Section 15 of the Acts they stand today came into force by Gujarat Act No. 5 of 1973 from 3rd March, 1973 and before that the provisions were as contained in Section 15 of the Ace which was introduced by the Act No. 13 of 1956. This section 15 under the Act of No. 13 of 1956,the tenant may terminate tenancy at any time by surrendering his interest therein in favour of the landlord provided that such surrender shall be in writing and verified before the Mamlatdar in the

prescribed manner. Although it was not so specifically mentioned by Mr.Patel but prior to this provision of Section 15 by Act No. 13/56, Bombay Act. No. 33/52 provided in Section 5 thereof provisions for the duration of the tenancy for not less than ten years and then in Section 5(3)(b) proviso, it laid down that the tenant may terminate the tenancy by surrendering his interest as a tenant in favour of the landlord., provided that the surrender shall be in writing and verified before the Mamlatdar in the prescribed manner. Now in the instant case before the tribunal, barring an isolated mutation entry No. 11435 of 4-12-154 in V.F. No.6, there is nothing to show that there had been a surrender of these lands by the present applicant or along with his brother Dudha, in favour of the landlord in the year 1954, since no evidence regarding surrender having been made by the tenants in writing before the Mamlatdar and its verification is available. It is undisputed between the parties that barring entry No. 11435 there is nothing to show that there has been a surrender of tenancy right by the tenant. Therefore, mutation of entry on its face value to believe that there was a surrender of the tenancy of these lands as required under Section 2(18)(d)). The tribunal has observed that if there is valid surrender under the law, then possession is continuous with the applicant Dana Kalyan with his brother all through out prior to and as on 1st April, 1957. Not only this the applicant along with his deceased brother was holding the possession of the lands as tenant on the date of mutation of entry No. 11435 which was made on 4th December, 1954 and on 15th June, 1955 which is the relevant date for the purpose of Section 32FF read with Section 2(18)(d) of the Act and that they were also in possession of the lands on 1st April, 1957,the tiller' day. In this situation, the original claim of the applicant for fixation of the purchase price cannot be defeated simply because the Section in the caption of the application is wrongly mentioned as Section 32-FF read with Section 2(18)(d). The tribunal has relied upon the decision of this Court in case of FATEHMOHMED FAKIRMOHMED VS. JAMALBHAI CHANDBHAI 1983 GLT 167 and relevant observation quoted in the judgment of the tribunal reads as under :-

> "When the provisions is there, the Court should apply that provision, irrespective of the mistaken notion about the provisions of law in the mind of the litigant and / or his advocate."

##. The tribunal has also placed reliance on Section 78

of the Tenancy Act and has come to conclusion that considering the material on record of the Mamlatdar showing that he along with his brother was cultivating these lands as tenants to disregard such voluminous evidence on record as per the order dated 23rd December, 1982 passed by the Mamlatdar and ALT, Nadiad which favour the tenants on the sheer ground that the application has been made under the wrong caption of Section 32-FF would be clear denial of justice to a poor tenant. Even assuming without admitting that there was a surrender of the tenancy in 1954 as suggested by mutation entry No. 11435 dated 4th December, 1954, the tenant Danabhai and his brother Dudhabhai were in possession and cultivation of the lands as tenants as on 1st April, 1957 and continued to be as such till 3rd March, 1973 and even beyond that which would make them entitled to be deemed purchasers on 1st April, 1957 under Section 32. Therefore, considering all these aspects, the tribunal has come to the conclusion that the order passed by the Mamlatdar and ALT, Nadiad dated 6th August, 1985 is just, legal and proper and required to be upheld and therefore, the orders passed by the Deputy Collector in Tenancy Appeal, Kheda dated 15th April, 1986 is not in consonance with the provisions of the Act was the same was based upon the unlawful premises and required to be set aside. These are observations made by the tribunal while examining the merits of the matter and also considering the relevant provisions of the Tenancy Act and effect of the said provisions under the law. But the fact remains that the respondent is deemed purchasers under the provisions of Section 32 of the Tenancy Act on tillers' day on 1st April, 1957. Therefore, the landlord from the date of statutory sale was only entitled to receive purchase price. Without any act of transfer inter vivios, the title of the landlord was extinguished and created simultaneously in the tenant making the tenant, the deemed purchaser on 1st April, 1957 and the provisions of Transfer of Property Act came to an end.

##. I have perused the entire order passed by the revenue tribunal as well as the earlier orders passed by the lower authorities. In the present case, it is necessary to consider by this Court is administration of justice under the Bombay Tenancy Act, a beneficial provision for economically weaker sections, judicial craftsmanship does not lie in achieving some logically correct result through hypertechnical process of reasoning and this Court is of the opinion that substantial justice should not suffer on account of mere technicality. The aforesaid view has been taken by this Court in case of JETHABHAI DUDHABHAI V. BAI HARKHA

reported in 1985 GLH page 77, the relevant para-4 and 5 of the said decision are as under :-

"Be it noted that this point was not taken up by the respondent-landlord before either of the two lower authorities. The point was allowed to be raised for the first time before the Tribunal and the Tribunal upheld the same. In the conflict between the "Satan' of technicality and the `God' of substantial justice,the substantial justice was scarificed. However, as far as this High Court is concerned, technicality has been pushed aside and the substantial justice restored. An identical question arose in the case of RASULMIYA V. LALBHAI, reported in 24(1) GLR 714 (= 1983 GLH 655). In that case the application for restoration of possession was made by the tenant after the prescribed period of limitation. The Mamlatdar proceeded on the footing that his suo motu jurisdiction was invoked by an application. When the point of limitation was raised, this Court (Coram : S.B./Majmudar, J.) in para 6 of the judgment has held as follows :

".... if a competent officer under Tenancy Act decides the matter on merits even though the said decision may not be supportable by a given provision of law it can still be sustained under any other provision of the Tenancy Act. In the present case also the Mamlatdar has been advisably entrusted with suo motu power by the legislature, to entertain any appropriate case under Section 32(1B) even if the aggrieved tenant might not have applied within time for redress of his grievance. It is pertinent to note that Section 32(1B) is a beneficial provision enacted with a view to protect the rights of illiterate and ignorant tenants who might have been duped by their crafty landlords into giving up possession of their lands contrary to the provisions of the Tenancy Act. Such tenants might skip the period of one year's limitation as provided by the statutory rules. However, they are given a locus paenitentia in the form of invocation of suo motu powers of Mamlatdar for getting justice. Their time-barred applications seek to do nothing else but to inform the Mamlatdar about the injustice done to them. Once convinced of the justness of the grievance put forward by such a tenant, if the Mamlatdar proceeds to deal with the case

under Section 32(1B) on merits, only inference that can follow from such a course adopted by the Mamlatdar is that he has thought it fit to invoke his suo motu powers which are not subject to any period of limitation ....

It is further pertinent to note that legislature in its wisdom has not put any time limit to the exercise of suo motu powers by the Mamlatdar under Section 32(1B). By no process of judicial interpretation such a time limit can be engrafted in the Section. Only safety valve can be that such powers should be exercised within reasonable time. Whether exercise of suo motu powers of the Mamlatdar is within reasonable time or not will depend on facts and circumstances of each case. As shown above Section itself demonstrates how by change of circumstances with passage of time, the said exercise would become unreasonable and or futile."

5. In view of this settled legal position, the approach adopted by the Tribunal is patently erroneous and illegal. The tribunal should have reminded itself of the fact that the thrust of socially and economically backward class of people be protected from being exploited. The Bombay Tenancy Act is a beneficial provision enacted with a view to see that the economically weaker sections of the society get advantage of such provision and the illiterate and downtrodden people are not deprived of their right. Judicial craftsmanship and/or excellence does not lie in achieving some logically correct results through the hyper technical process of reasoning and mechanical approach. The `rule of law' is not an abstract doctrine to be religiouly adhered to as per the letter of law. Rule of law has got to be akin to or has to run with the `rule of life' as per the accepted national philosophy of the country.The socially and economically backward class of citizens are required to be protected from being exploited by the stronger one. This is the mandate of the Constitution. It must be realised that Judiciary commands respect of the people not because of excellence in logic and technicality. Judicially will be respected by the people only if it subserves the cause of substantial justice. In the instant case, the cause of substantial justice has suffered a lethal blow at the altar of technicality and the

> most unfortunate part of the case is that the technicality subverted the cause of substantial and social justice at the tribunal level. To say the least, such an approach being against the spirit and mandate of the Constitution is highly deplorable."

##. I have considered the observations which has been made by the tribunal in detail and this court is of the opinion that the tribunal has not committed any error. There is no jurisdictional error committed by the tribunal. The tribunal has remained within the statutory jurisdiction and passed just, proper, legal and valid order after appreciating the evidence on record. In my opinion, the tribunal has rightly rejected the plea of the petitioner which mainly based on technicality. Such technical approach must have to be deprecated when weaker sections having legitimate right protected by beneficial legislatures with mandatory statutory provisions. Therefore, according to my opinion, the approach of the tribunal is perfectly right and in consonance with the provisions of the Act and to achieve the object of the Act. The tribunal has rightly passed the order in question. As such, there is no infirmity in the order which requires any interference by this court while exercising the powers under Articles 226 and 227 of the Constitution.

##. The view taken by the Apex Court in case of MOHD. YUNUS V. MOHD. MOSTAQUIM reported in AIR 1984 Supreme Court 38 wherein it is observed by the Apex Court that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

##. Similarly, recently in case of KHIMJOI VIDHU VS. PREMIER HIGH SCHOOL reported in 2000 AIR SCW 2333, the Apex Court has observed that petition under Article 227, in findings of facts no interference is permitted. The jurisdiction under Article 227 may be exercised to correct errors of jurisdiction and the like but not to

upset pure findings of fact which falls in the domain of appellate court only. The Supreme Court recently in case of INDIAN OVERSEAS BANK VS. I.O.B. STAFF CANTEEN WORKERS' UNION AND ANOTHER reported in 2000 Supreme Court Cases (L & S) 471 observed that;

"Constitution of India - Article 226 Interference with pure findings of fact Reappreciation of evidence, held, is impermissible - High Court does not exercise appellate jurisdiction under Article 226 Insufficiency of evidence or that another view is possible, held, no ground to interfere with finding of Industrial Tribunal - Writ Judge could only see if the legally established criteria for grant of relief were satisfied or not "

Similar view has also been recently expressed by the Apex Court in case of VANEET JAIN VS. JAGJIT SINGH reported in AIR 2000 SUPREME COURT 2080 that the High Court in its revisional jurisdictione cannot reassess or reevaluate the evidence only to come to a different findings than what has been recorded by the lower court.

##. Thus, in view of the foregoing discussions and considering the settled law as referred to in the decision referred to above, this Court is of the opinion that the tribunal has rightly reappreciated the evidence which was appreciated by the lower authority. Now this Court cannot re-appreciate the evidence again which was very well examined while exercising the powers under Article 226 and 227 of the Constitution and further considering the view taken by the Apex Court in reported case of Ahmedabad Municipal Corporation Vs. Virendrakumar Jayant Patel, 1998 (1) GLR 17 and 1998 AIR SCW 1840, this Court cannot act as an Appellate authority and cannot reappreciate the very same evidence which were rightly appreciated by the lower authorities and therefore, in opinion of this court, the observations of the tribunal is purely based on the findings of facts which cannot be disturbed by this Court while reappreciating the very same evidence while exercising the powers under Articles 226 and 227 of the Constitution and therefore, the petition devoid of merits deserves to be dismissed and same is dismissed accordingly. Rule is discharged. Interim relief if any, stands vacated. No order as to costs.

Date : 04/10/2000 [H.K.Rathod,J.]

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